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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,106	02/16/2001	Martin Sugar	BEIERSDORF 7	3482

7590                    08/27/2003

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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
1617	18

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Applicant No.	Applicant(s)
	09/763,106	SUGAR ET AL.
Examiner	Art Unit	
Lauren Q Wells	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 August 2003.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 7 and 12-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 7 and 12-17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

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### **DETAILED ACTION**

Claims 7 and 12-17 are pending.

#### ***112 Rejection Maintained***

The rejection of claims 7 and 12 under 35 U.S.C. 112 is MAINTAINED for the reasons set forth in the Office Action mailed 5/2/03, Paper No. 16, and those found below.

Applicant argues, "Regarding 1), the Examiner appears to treat the instant claims as directed to a pharmacological treatment". This argument is not persuasive, as the Examiner has not treated the instant claims as a pharmacological treatment, and it is not known why Applicant has made such a statement.

Applicant argues, "Regarding 3) and 4), the Examiner concedes the level of skill in the art is high and also there is high predictability in the art. Therefore, a person of ordinary skill in the art would need less information to practice the present invention". This argument is not persuasive, as this does not provide enablement for the instant claims.

Applicant argues, "Regarding 5), Applicants submit the instant claims do not encompass any and all ingredients. . .Therefore, the instant claims cannot require any or all ingredients and amounts thereof that do not allow the purpose to be fulfilled". This argument is not persuasive. Applicant has made this statement, but has not provided any evidence that this would be the case. Applicant's open ended language does not exclude any ingredients from their composition. Additionally, the instant disclosure provides no guidance as to what combination of ingredients and amounts would result in the prevention of the attachment of a lauryl ether sulfate to human skin".

Applicant argues, "Regarding 6), the Examiner cannot find guidance in the specification for 'preventing' but concedes to 'reducing'. It is respectfully noted how the Examiner can

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find ‘reducing’ but not ‘preventing’”. This argument is not persuasive. No where in the instant disclosure has Applicant providing guidance for preventing, wherein preventing indicates that the subject never experiences any characteristics associated with adherence. To state that this instant invention provides prevention without providing evidence is contrary to what is known in the art. Since the term “preventing” means that a subject never experiences the symptoms of adherence, the burden is on Applicant to show that the instant invention provides such prevention.

This rejection can be overcome by deleting the term “preventing” from the instant claims.

***102 Rejection Maintained***

The rejection of claims 7, 12-17 under 35 U.S.C. 102(b) as being anticipated by Mager et al. (JP 09-301834) is MAINTAINED for the reasons set forth in the Office Action mailed 5/2/03, Paper No. 16, and those found below.

Applicant argues, “it can be seen by the cited abstract that the formulation does not have to contain either the N-acylglutamate or sodium lauryl ether sulfate. . .Applicants point out that the location of ‘and/or’ makes clear that neither sodium lauryl ether sulfate nor N-acylglutamate are necessary components”. This argument is not persuasive. It is respectfully pointed out that Mager et al. teach a composition comprising N-acylglutamate and sodium lauryl ether sulfate as one of their embodiments. It is respectfully pointed out that nowhere does the reference exclude such a combination. Regardless of the “and/or” statements, Mager et al. teach a composition comprising N-acylglutamate and sodium lauryl ether sulfate.

Applicant argues, “The Examiner takes the position the application of the preparation to hair would inherently result in its application to the scalp. Applicants submit this is not necessarily the case, and respectfully request that the Examiner document her position”. This

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argument is not persuasive. The Examiner respectfully points out that the hair and the scalp (skin) are inseparable from each other, as they are attached to each other. The hair is joined to the body at the scalp. Thus, washing the hair does wash the scalp.

Applicant argues, "For many applications, a person is bent over a sink, in a salon for example, where the sole purpose is for the remainder of the body not be in contact with the shampooing agents. Accordingly, it is possible for hair to be washed without wetting the scalp". This argument is not persuasive. Again the Examiner reminds the Applicant that the hair and scalp are inseparable, as they are attached. Additionally, the Examiner respectfully points out that a person with a buzz or short hair cut, or a person who is balding would not be able to wash their hair without wetting their scalp.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw

  
\_\_\_\_\_  
SREENI PADMANABHAN  
PRIMARY EXAMINER  
